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| In re Application of | : | |
| NIKITIN et al | : | DECISION ON |
| PCT No.: PCT/RU99/00385 | : | |
| Int. Filing Date: 07 December 2000 | : | PETITION UNDER |
| Priority Date: 26 November 1999 | : | |
| Attorney's Docket No.: U 013722-1 | : | 37 CFR 1.10(c) and 1.83 |
| For: METHOD OF DECORATIVE... | : | |
| MASS LINE PRODUCTION | : | |

This decision is in response to petitioner's "Petition Under 37 CFR 1.10(c) and (e) and Invoking Extraordinary Circumstances" filed on 06 December 2001, which is being treated as a petition under 37 CFR 1.183 requesting a filing date of 19 November 2001.

BACKGROUND

On 19 November 2000, petitioner purports filing a transmittal letter for entry into the national stage in the United States which was accompanied by, inter alia, the requisite basic national fee as required by 35 U.S.C. 371(c), a copy of the international application, and an executed declaration.

On 06 December 2001, petitioner filed the present petition stating that the above application was deposited with the USPS as an Express Mail package on 19 November 2001. Applicant has provided: 1) a copy of the mailing label showing the date-in, and 2) a copy of the underassigned's express mail log for the date of deposit as 19 November 2001. Applicant is requesting treating the petition under 37 CFR 1.10(c), (e) and invoking extraordinary circumstances.

The petition has also been treated under 37 CFR 1.6(e). Accordingly, the petition fee for a petition under 37 CFR 1.183 is not required.

DISCUSSION

Petition Under 37 CFR 1.10(c)

37 CFR 1.10(c) states:

Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that there is a discrepancy between the filing date accorded by the Office to the correspondence and the date of

deposit as shown by the "date-in" on the "Express Mail" mailing label or other official USPS notation, may petition the Commissioner to accord the correspondence a filing date as of the "date-in" on the "Express Mail" mailing label or other official USPS notation, provided that:

- (1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date other than the USPS deposit date;
- (2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail;" and
- (3) The petition includes a true copy of the "Express Mail" mailing label showing the "date-in," and of any other official notation by the USPS relied upon to show the date of deposit.

With regard to item (1), the present petition filed 06 December 2001 was promptly filed.

With regard to item (2), a review of the application file indicates that the number of the Express Mail mailing label "EV011019192US" provided by the petition is not the same number as the Express Mail mailing label on the application, which is "EV011019189US." The copy provided appears to be an original Express Mail mailing label, and it does not correspond with the Express Mail mailing label on the application as noted above. In addition, the certification under 37 CFR 1.10 indicates a mailing date of 16 November 2001 for the Express Mail mailing label US011019189US.

With regard to item (3), the copy of the Express Mail mailing label shows a "Date in" of 17 November 2001 not the date the applicants alleges as the deposit date of the application, which applicant purports to be 19 November 2001.

Further it is noted that the mail log supplied by the applicant also does not match the times, Express Mail number and application allegedly filed on the 16th and 19th of November.

As indicated above items (2) and (3) have not been met. 37 CFR 1.10(c) requires that the number of the "Express Mail" mailing label be placed on the papers. Attention is directed to MPEP § 513, which states in part, "if the number of the mailing label did not appear on the correspondence as originally filed, relief will not be granted on petition under 37 CFR 1.10(c) through (e), even if the party who filed the correspondence satisfies the other requirements of 37 CFR 1.10(c), 1.10(d) or 1.10(e)." Accordingly, relief is not granted on petition under 37 CFR 1.10(c). MPEP § 513 also states that:

Since the filing of correspondence under 37 CFR 1.10 without the number of the "Express Mail" mailing label thereon is an oversight that can be avoided by the exercise of reasonable care, requests for waiver of this requirement will not be granted on petition. A party's inadvertent failure to comply with the requirements of a rule is not deemed to be an extraordinary situation that would warrant waiver of a rule under 37 CFR 1.183, 2.146(a)(5) or 2.148, nor is such an inadvertent omission considered "unavoidable," within the meaning of 15 U.S.C. 1062(b), 35 U.S.C. 133, 37 CFR 1.137(a) or 37 CFR 2.66(a). [case citations omitted] (emphasis added)

Request Under 37 CFR 1.6(e)

37 CFR 1.6(e) provides:

If interruptions or emergencies in the United States Postal Service which have been so designated by the Commissioner occur, the Patent and Trademark Office will consider as filed on a particular date in the Office any correspondence which is:

- (1) Promptly filed after the ending of the designated interruption or emergency; and
- (2) Accompanied by a statement indicating that such correspondence would have been filed on that particular date if it were not for the designated interruption or emergency in the United States Postal Service.

On 20 November 2001, the USPTO designated the refusal of certain post offices to accept the deposit of mail for delivery by Express Mail as a postal service interruption and emergency within the meaning of 35 U.S.C. 21(a). However, petitioner has not established that the application was subjected to a postal service emergency on 19 November 2001. Specifically, petitioner has not established that any post office refused to accept the deposit of mail for delivery by Express Mail on 19 November 2001. The "Notification Related to Events of September 11, 2001" posted on the USPTO web site on 09 October 2001 states that for United States Postal Service interruptions relating to Express Mail, applicant should submit a statement by the person who originally attempted to deposit the correspondence with the USPS by Express Mail, the statement must indicate the date on which the person attempted to deposit the correspondence with the USPS and that the USPS refused to accept the correspondence, and the statement must be signed in accordance with 37 CFR 10.18. No such statement has been submitted in this application. Nor is it clear that an attempt was made to deposit correspondence with the USPS on 19 November 2001 and that it was refused. Accordingly, it does not appear that this application has been subjected to a postal interruption.

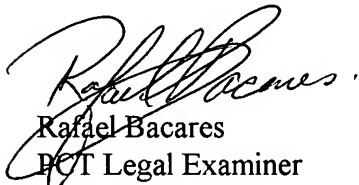
Moreover, the petition with the evidence provided is confusing because it does correspond with the application seeking relief for the reasons noted above. Petitioner should provide a clear summary of the facts in mailing the above application with the proper evidence supporting those facts and supporting the relief sought under 37 CFR 1.10(c), (e) and the for the USPTO to invoke extraordinary circumstances under 37 CFR 1.6(e). Currently, petitioner's explanation and evidence provided do meet the requirements for the relief sought.

CONCLUSION

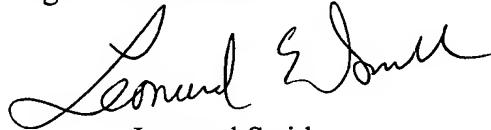
For the reasons set forth above, applicant's petition under 37 CFR 1.10(c) is **DISMISSED** without prejudice. Also, applicant's request that the application be accorded a filing date of 19 November 2001 in accordance with 37 CFR 1.6(e) is **DISMISSED** without prejudice.

If reconsideration on the merits of this petition is desired, a proper reply must be filed within TWO (2) MONTHS from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.10(c) [or 37 CFR 1.6(e), as appropriate]." No additional petition fee is required.

Please direct further correspondence with respect to this matter to the Assistant Commissioner for Patents, Box PCT, Washington, DC 20231, and address the contents of the letter to the attention of the Office of PCT Legal Administration.



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